

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

TRUSTEES OF THE FIVE RIVER  
CARPENTERS DISTRICT COUNCIL  
HEALTH AND WELFARE FUND and  
TRUSTEES OF THE FIVE RIVER  
CARPENTERS JOINT  
APPRENTICESHIP AND TRAINING  
COMMITTEE FUND,

Plaintiffs,

vs.

STEINER CONSTRUCTION, INC.,

Defendant.

No. C03-75 LRR

**ORDER REGARDING PLAINTIFFS'  
MOTION FOR DEFAULT  
JUDGMENT**

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Presently pending before the court is Plaintiffs' Motion for Default Judgment (docket no. 5) and Plaintiffs' Supplemented Motion for Default Judgment (docket no. 6). Plaintiffs' unresisted motions seek entry of a default judgment against Defendant Steiner Construction, Inc.

***I. FACTUAL BACKGROUND***

On June 17, 2003, Plaintiffs Trustees of the Five River Carpenter District Council Health and Welfare Fund and Trustees of the Five River Carpenter Joint Apprenticeship and Training Committee Fund filed a Complaint against Defendant Steiner Construction, Inc., ("Steiner") for alleged violations of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001, *et seq.* In their Complaint, Plaintiffs claim Steiner breached the parties' Collective Bargaining Agreement by failing to make certain contributions to the Health and Welfare Fund and to the Apprenticeship Fund.

On June 23, 2003, service of the Complaint was made on Steiner by personal

service on Karen Steiner, registered agent for Steiner. Steiner has failed to answer or otherwise respond to Plaintiffs' Complaint. On July 25, 2003, Plaintiffs requested that the clerk of court enter default against Steiner. The clerk of court granted Plaintiffs' request for entry of default on September 30, 2003. Plaintiffs now ask the court to enter default judgment against Steiner as follows:

- a. \$20,231.54 for delinquent contributions owed to Plaintiff Five River Carpenters District Council Health and Welfare Fund;
- b. \$1,817.55 for delinquent contributions owed to Plaintiff Five River Carpenters Joint Apprenticeship and Training Committee Fund;
- c. \$3,400.60 for liquidated damage penalty owed to Plaintiff Five River Carpenters District Council Health and Welfare Fund;
- d. \$308.20 for liquidated damage penalty owed to Plaintiff Five River Carpenters Joint Apprenticeship and Training Committee Fund;
- e. Interest on the unpaid contributions pursuant to 29 U.S.C. § 1132(g)(2) and 26 U.S.C. § 1132(g); and
- f. \$1,297.50 for attorney's fees and \$175.00 for costs.

In support of their claims for delinquent contributions, liquidated damages, and unpaid contributions, Plaintiffs submitted an affidavit by Shelley Vandraska, office manager for Eastern Iowa Fringe Benefits, Inc., the third party administrator for Plaintiffs. In support of their claim for attorney's fees and costs, Plaintiffs submitted two affidavits by attorney Joseph E. Day.

## ***II. DISCUSSION***

### ***A. Legal Standard for Default Judgment Pursuant to ERISA***

The entry of a default judgment is a matter in the trial court's discretion. *Swink v. City of Pagedale*, 810 F.2d 791, 792 (8th Cir. 1987). In exercising its discretion, the

court should consider:

the amount of money potentially involved; whether material issues of fact or issues of substantial public importance are at issue; whether the default is largely technical; whether plaintiff has been substantially prejudiced by the delay involved; and whether the grounds for default are clearly established or are in doubt. Furthermore, the court may consider how harsh an effect a default judgment might have, or whether the default was caused by a good-faith mistake or by excusable or inexcusable neglect on the part of the defendant.

10 Wright, Miller & Kane, *Federal Practice and Procedure* § 2685.

The Eighth Circuit Court of Appeals adheres to the strong judicial policy against default judgments. *Oberstar v. Federal Deposit Ins. Corp.*, 987 F.2d 494, 503-04 (8th Cir. 1993) (citing *Marshall v. Boyd*, 658 F.2d 552, 554 (8th Cir. 1981), and noting that this judicial preference for adjudication on the merits “goes to the fundamental fairness of the adjudicatory process.”).

After the court finds that a judgment by default should be entered, it must determine the amount of damages to be awarded. “If defendant does not contest the amount prayed for in the complaint and the claim is for a sum certain that can be made certain by computation, the judgment generally will be entered for that amount without any further hearing.” 10 Wright, Miller & Kane, *Federal Practice and Procedure* § 2688.

ERISA provides additional rules for default judgments. *See* 29 U.S.C. § 1132(g)(2). By enacting Section 1132(g)(2), Congress intended to preserve the private multi-employer pension plan system by ensuring that employers make the required contributions to the pension plans. *Iron Workers Dist. Council of Western New York & Vicinity Welfare & Pension Funds v. Hudson Steel Fabricators & Erectors, Inc.*, 68 F.3d 1502, 1506 (2d Cir. 1995). “The intent of this section is to promote the prompt payment

of contributions and assist plans in recovering the costs incurred in connection with delinquencies.” *Cent. States, Southeast & Southwest Areas Pension Fund v. Alco Express Co.*, 522 F.Supp. 919, 928 (E.D.Mich. 1981) (citing to Senate legislative history).

When a court awards a default judgment against a defendant for contributions owed under a collective bargaining agreement, 29 U.S.C. § 1132(g) provides that the court must award: (1) the unpaid contributions; (2) interest on the unpaid contributions at an amount provided for by the plan not to exceed twenty percent or, if none, the rate prescribed under 26 U.S.C. § 6621; (3) liquidated damages or interest on the unpaid contributions, whichever is higher; (4) reasonable attorney’s fees and costs of the action, to be paid by the defendant; and (5) any other legal or equitable relief as the court deems appropriate. 29 U.S.C. § 1132(g). The unpaid contributions, interest, and liquidated damages generally are considered “sums certain” pursuant to the calculations mandated in ERISA and the parties’ agreements. *Combs v. Coal & Mineral Mgmt. Servs., Inc.*, 105 F.R.D. 472, 474 (D.D.C. 1984). The amount of attorney’s fees, however, is not considered a sum certain as the “reasonableness of the fees requested by the [plaintiff] is a ‘judgment call’ which only the [c]ourt can make.” *Id.* at 475.

## ***B. Analysis***

### ***1. Damages***

Steiner has failed to plead or otherwise defend this action. Consequently, the clerk of court entered default pursuant to Federal Rule of Civil Procedure 55. Plaintiffs now move for entry of default judgment and support their request with affidavits. Having evaluated the relevant law and examined the declarations and other submissions provided by Plaintiffs, the court enters the following default judgment.

Plaintiffs request \$20,231.54 for delinquent contributions owed to Plaintiff Five River Carpenters District Council Health and Welfare Fund and \$1,817.55 for delinquent

contributions owed to Plaintiff Five River Carpenters Joint Apprenticeship and Training Committee Fund. Plaintiffs further request \$3,400.60 for liquidated damages owed to Plaintiff Five River Carpenters District Council Health and Welfare Fund and \$308.20 for liquidated damages owed to Plaintiff Five River Carpenters Joint Apprenticeship and Training Committee Fund. As these calculations appear accurate and these requests comply with ERISA, the court grants these requests.

## **2. Interest**

Under 28 U.S.C. § 1132(g)(2), interest shall be awarded by using the rate provided under the plan, or, if none, shall be awarded based on the rate prescribed under 26 U.S.C. § 6621. The record does not indicate that the parties fixed a rate of interest to be applied in calculating the amount of interest due. Therefore, Plaintiffs are due interest based on the application of the statutory rate contained in 26 U.S.C. § 6621, calculated from the date the payments first came due. Section 6621 of Title 26 provides, in pertinent part: “[t]he overpayment rate established under this section shall be the sum of . . . the Federal short-term rate determined under subsection (b), plus . . . 2 percentage points.” *See* 26 U.S.C. § 6621(a)(1).<sup>1</sup> Subsection (b) of Section 6621 states that “[t]he Secretary shall determine the Federal short-term rate for the first month in each calendar quarter.” *See* 26 U.S.C. § 6621(b). Plaintiffs have submitted to the court that interest on the unpaid contributions through March 11, 2004, as calculated in accord with Section 6621, is \$936.93. Steiner has not contested Plaintiffs’ interest calculation. Accordingly, the court awards Plaintiffs prejudgment interest in the amount of \$936.93.

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<sup>1</sup>26 U.S.C. § 6621(a)(1)(b) was amended in 1998 by Pub.L. No. 105-206, section 3302(a). Subpart (b), which read “2 percentage points,” has been rewritten as follows: “3 percentage points (2 percentage points in the case of a corporation).”

### ***3. Attorney's Fees and Costs***

ERISA provides that an employee benefit plan is entitled to reasonable attorney's fees on entry of a judgment in favor of the plan. *See* 29 U.S.C. § 1132(g)(2)(D). An award of attorney's fees is mandatory; however, the reasonableness of the fees is at the discretion of the court. Regarding the reasonableness of the fees requested, the court is familiar with the prevailing rates in the Iowa legal market for attorneys with the same skill, experience, ability and competence as that of Joseph E. Day. After reviewing Mr. Day's affidavits, along with the file and pleadings in this case, the court determines that the fees incurred in preparing and presenting this action to the court for judgment were reasonable and necessary. The Court thus finds that Plaintiffs are entitled to reasonable attorney fees in the amount of \$1,297.50.

Under ERISA, reasonable costs are to be paid by the defendant. *See* 29 U.S.C. § 1132(g)(2). Therefore, Steiner shall pay \$175.00 in costs.

### ***III. CONCLUSION***

IT IS THEREFORE ORDERED that:

1. Plaintiffs' Motion for Default Judgment (docket no. 5) and Supplemented Motion for Default Judgment (docket no. 6) are GRANTED.

2. Defendant Steiner Construction, Inc., shall pay to Plaintiff Trustees of the Five River Carpenters District Council Health and Welfare Fund:

- a. \$20,231.54 for delinquent contributions; and
- b. \$3,400.60 for liquidated damages.

3. Defendant Steiner Construction, Inc., shall pay to Plaintiff Trustees of the Five River Carpenters Joint Apprenticeship and Training Committee Fund:

- a. \$1,817.55 for delinquent contributions; and
- b. \$308.20 for liquidated damages.

4. Defendant Steiner Construction, Inc., shall pay to Plaintiffs \$936.93 for prejudgment interest.

5. Defendant Steiner Construction, Inc., shall pay to Plaintiffs \$1,297.50 for attorney's fees.

6. Defendant Steiner Construction, Inc., shall pay to Plaintiffs \$175.00 for costs.

SO ORDERED this 16th day of March, 2004.

  
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LINDA R. READE  
JUDGE, U. S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA